

AMENDED IN ASSEMBLY JUNE 3, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1086

Introduced by Assembly Member Laird

February 20, 2003

An act to amend Section 1368 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1086, as amended, Laird. Common interest developments: transfer of title.

Existing law requires that an owner of a separate interest in a common interest development provide certain items to a prospective purchaser prior to transfer of title, and prohibits an association from imposing or collecting any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and a specified charge for providing certain information upon request.

This bill would additionally prohibit an entity or person affiliated with the association from imposing or collecting any assessment, penalty, or fee in connection with a transfer of title as described above, *with specified exceptions for certain community service organizations, as defined*. The bill would state that a community association manager is an agent, as specified, of the association, and would state that the bill does not expand or diminish the authority of an association or its agent to charge a reasonable fee for services in connection with providing

information as described above. This bill would also make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1368 of the Civil Code is amended to
2 read:

3 1368. (a) The owner of a separate interest, other than an
4 owner subject to the requirements of Section 11018.6 of the
5 Business and Professions Code, shall, as soon as practicable before
6 transfer of title to the separate interest or execution of a real
7 property sales contract therefor, as defined in Section 2985,
8 provide the following to the prospective purchaser:

9 (1) A copy of the governing documents of the common interest
10 development, including a copy of the association's articles of
11 incorporation, or, if not incorporated, a statement in writing from
12 an authorized representative of the association that the association
13 is not incorporated.

14 (2) If there is a restriction in the governing documents limiting
15 the occupancy, residency, or use of a separate interest on the basis
16 of age in a manner different from that provided in Section 51.3, a
17 statement that the restriction is only enforceable to the extent
18 permitted by Section 51.3 and a statement specifying the
19 applicable provisions of Section 51.3.

20 (3) A copy of the most recent documents distributed pursuant
21 to Section 1365.

22 (4) A true statement in writing obtained from an authorized
23 representative of the association as to the amount of the
24 association's current regular and special assessments and fees, any
25 assessments levied upon the owner's interest in the common
26 interest development that are unpaid on the date of the statement,
27 and any monetary fines or penalties levied upon the owner's
28 interest and unpaid on the date of the statement. The statement
29 obtained from an authorized representative shall also include true
30 information on late charges, interest, and costs of collection which,
31 as of the date of the statement, are or may be made a lien upon the
32 owner's interest in a common interest development pursuant to
33 Section 1367 or 1367.1.



(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service that may not exceed the association's reasonable cost to prepare and reproduce the requested items.

~~(c) An~~

(c) (1) Subject to the provisions of paragraph (2), an association, entity, or person affiliated with the association may not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

~~(A)~~

(A) An amount not to exceed the association's actual costs to change its records.

1 ~~(2)~~

2 (B) An amount authorized by subdivision (b).

3 (2) *The amendments made to this subdivision by the act adding*
4 *this paragraph do not apply to a community service organization*
5 *or similar entity that is described in subparagraph (A) or (B):*

6 (A) *The community service organization or similar entity*
7 *satisfies all of the following requirements:*

8 (i) *The community service organization or similar entity was*
9 *established prior to February 20, 2003.*

10 (ii) *The community service organization or similar entity exists*
11 *and operates, in whole or in part, to fund or perform environmental*
12 *mitigation or to restore or maintain wetlands or native habitat, as*
13 *required by the state or local government as a written condition of*
14 *development.*

15 (iii) *The community service organization or similar entity does*
16 *not require the purchaser of a separate interest to pay the fee or*
17 *charge it collects at the time of transfer more than once.*

18 (B) *The community service organization or similar entity*
19 *satisfies all of the following requirements:*

20 (i) *The community service organization or similar entity is not*
21 *an organization or entity described in subparagraph (A).*

22 (ii) *The community service organization or similar entity was*
23 *established prior to January 1, 2004.*

24 (iii) *On and after January 1, 2006, the community service*
25 *organization or similar entity offers a purchaser the following*
26 *payment options for the fee or charge it collects at time of transfer:*

27 (I) *Paying the fee or charge at the time of transfer.*

28 (II) *Paying the fee or charge pursuant to an installment*
29 *payment plan for a period of not less than seven years. If the*
30 *purchaser elects to pay the fee or charge in installment payments,*
31 *the community service organization or similar entity may also*
32 *collect additional amounts that do not exceed the actual costs for*
33 *billing and financing on the amount owed. If the purchaser sells*
34 *the separate interest before the end of the installment payment plan*
35 *period, the purchaser shall pay the remaining balance prior to*
36 *transfer.*

37 (iv) *The community service organization or similar entity does*
38 *not require the purchaser of a separate interest to pay the fee or*
39 *charge it collects at the time of transfer more than once.*

1 (3) *For the purposes of this subdivision, a “community service*
2 *organization or similar entity” means a nonprofit entity that is*
3 *organized to provide services to residents of the common interest*
4 *development.*

5 (d) Any person or entity who willfully violates this section is
6 liable to the purchaser of a separate interest that is subject to this
7 section for actual damages occasioned thereby and, in addition,
8 shall pay a civil penalty in an amount not to exceed five hundred
9 dollars (\$500). In an action to enforce this liability, the prevailing
10 party shall be awarded reasonable attorneys’ fees.

11 (e) Nothing in this section affects the validity of title to real
12 property transferred in violation of this section.

13 (f) In addition to the requirements of this section, an owner
14 transferring title to a separate interest shall comply with applicable
15 requirements of Sections 1133 and 1134.

16 (g) For the purposes of this section, a person who acts as a
17 community association manager is an agent, as defined in Section
18 2297, of the association.

19 SEC. 2. The provisions of this act do not expand or diminish
20 the authority of an association or its agent to charge a reasonable
21 fee to provide information pursuant to subdivision (b) of Section
22 1368 of the Civil Code.

